# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 15815 of 2003**
**With**
**SPECIAL CIVIL APPLICATION No. 6533 of 2003**
**With**
**SPECIAL CIVIL APPLICATION No. 7024 of 2003**
**With**
**SPECIAL CIVIL APPLICATION No. 12959 of 2003**
**With**
**SPECIAL CIVIL APPLICATION No. 12960 of 2003**
**With**
**SPECIAL CIVIL APPLICATION No. 12961 of 2003**
**With**
**SPECIAL CIVIL APPLICATION No. 13951 of 2003**
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**SPECIAL CIVIL APPLICATION No. 14488 of 2003**
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**SPECIAL CIVIL APPLICATION No. 14489 of 2003**
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**SPECIAL CIVIL APPLICATION No. 15816 of 2003**
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**SPECIAL CIVIL APPLICATION No. 4841 of 2004**
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**SPECIAL CIVIL APPLICATION No. 5401 of 2004**
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**SPECIAL CIVIL APPLICATION No. 5910 of 2004**
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**SPECIAL CIVIL APPLICATION No. 12446 of 2004**
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**SPECIAL CIVIL APPLICATION No. 18136 of 2003**
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**SPECIAL CIVIL APPLICATION No. 3955 of 2004**
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**SPECIAL CIVIL APPLICATION No. 3956 of 2004**
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**SPECIAL CIVIL APPLICATION No. 6815 of 2004**
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**SPECIAL CIVIL APPLICATION No. 6816 of 2004**
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**SPECIAL CIVIL APPLICATION No. 8544 of 2004**
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**SPECIAL CIVIL APPLICATION No. 3041 of 2003**
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**SPECIAL CIVIL APPLICATION No. 22663 of 2005**
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**SPECIAL CIVIL APPLICATION No. 22664 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 22665 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 22666 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 23749 of 2005**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE J.M.PANCHAL**
&
**HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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**LARSEN & TOUBRO LTD. ECC DIVISION - Petitioner**
**Versus**
**INSPECTOR OF MOTOR VEHICLES & ANR. - Respondents**

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**Appearance :**
MR VC KOTWAL, Senior Advocate for MR BR GUPTA for Petitioner.
MR KAMAL B. TRIVEDI, Advocate General with MS SANGEETA VISHEN, ASSISTANT GOVERNMENT PLEADER for Respondents.

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**CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL**
**and**
**THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

**Date : 13/09/2006**

**COMMON ORAL JUDGMENT**

**(Per: MR.JUSTICE J.M.PANCHAL)**

In all these petitions, 87 in number, common questions of facts and law arise for determination of the Court with the only difference in type and nature of vehicles/machines. The question to be considered is as to whether such vehicle/machine is "motor vehicle" or "vehicle" within the meaning of Section 2(28) of the Motor Vehicles Act, 1988 and, therefore, liable to be taxed under the provisions of the Bombay Motor Vehicles Tax Act, 1958 or whether it is simply machine and/or equipment not covered under the Act of 1958. Therefore, this Court proposes to dispose of all these petitions by this common judgment after referring to the facts mentioned in Special Civil Application No.15815 of 2003, which is treated as the main petition.

2. By filing Special Civil Application No.15815

of 2003 under Article 226 of the Constitution, the petitioner, i.e. M/s.Larsen & Toubro Limited, has prayed to issue an appropriate writ or order to quash order dated September 19, 2003 rendered by the Commissioner of Transport, Gujarat State, in Tax Appeal No.77 of 2003, holding that crawler-crane 'TATA-320' falls within the definition of "motor vehicle" as defined under Section 2(28) of the Motor Vehicles Act, 1988 ("the M.V. Act" for short), and as such, it is registrable under the M.V. Act and also taxable under the Bombay Motor Vehicles Tax Act, 1958 ("the Tax Act" for short). The petitioner has further prayed to direct the respondent No.1, i.e. the Inspector of Motor Vehicles, Check-Post, Amirgadh, to forthwith refund a sum of Rs.2,15,960/- which, according to the petitioner, came to be forcibly recovered from it on June 28, 2003 as condition precedent for allowing its equipment in question bearing Sr. No. T-3642 to travel from Gujarat State to Rajasthan, together with interest thereon at the bank rate and costs of the proceedings all throughout.

3. The petitioner is a public limited company incorporated under the provisions of the Companies Act, 1956. The Construction Division of this company undertakes the execution of "turn-key projects" all over India and for execution of these projects, it holds various kinds of equipments. According to the petitioner, it has a number of construction units

located at various places, and to carry out construction projects at different places all over the country, machines/equipments owned by the petitioner are transferred from one construction unit to another depending upon the work-load involved in the project at hand. It is the case of the petitioner that for execution of projects at Panipat in Haryana, the petitioner was required to transport in truck-trailer crawler mounted cranes called TATA-320 Crane bearing equipment Sr. No. T-3642 from near Bharuch town, which was likely to be detained and seized by the Inspector of Motor Vehicles, R.T.O. Check-Post, Amirgadh, on the ground that the said crane was a motor vehicle within the meaning of Section 2(28) of the M.V. Act and was liable to be taxed under the Tax Act. This apprehension was also entertained by the petitioner with reference to another equipment namely crawler mounted crane called TATA-320 bearing equipment Sr.No.T-3801 manufactured by TELCO in India. Therefore, the petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution by filing Special Civil Application Nos.8117 of 2003 and 8118 of 2003 seeking appropriate writ or order to hold that the petitioner's crawler crane TATA-320 was neither a 'motor vehicle' nor 'vehicle' under Section 2(28) of the M.V. Act and was, therefore, not required to be registered before the R.T.O. Authority in the State of Gujarat. Those two petitions came up for hearing before the learned Single Judge of this Court on June 19, 2003 and after hearing the learned counsels for the parties, the

Court disposed of the two petitions *vide* order dated June 19, 2003 by giving following directions:

> "*7. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:*
>
> *(i) If the vehicles of the petitioners are detained or stopped by the respondent-authority, i.e. officers of the State Govt., they shall intimate to the petitioners regarding the provisional amount to be paid towards tax etc. If such intimation is given, the petitioners shall make the payment under protest within 24 hours from the intimation and if such amount is deposited the vehicles shall be released forthwith. Thereafter, the petitioner shall submit reply within a period of one week from such intimation after the amount is deposited under protest and the officer concerned shall, if demanded, may give opportunity of hearing to the petitioners and take decision within a period of one month from filing of such reply or the date of hearing, as the case may be.*
>
> *(ii) It is further directed that in the event the authority takes decision not to recover the tax, then the amount deposited by the petitioner shall be refunded to the petitioner within a period of 15 days from the date of decision.*
>
> *(iii) It is also clarified that if the authority takes decision to recover the amount even after the adjudication, the petitioner will be at liberty to take*

*recourse to law for challenging such decision in accordance with law."*

3.1 What is claimed by the petitioner is that as condition precedent for allowing truck-trailer carrying crawler-crane to cross R.T.O. Check-Post at Amirgadh, the respondent No.1 on June 28, 2003 charged Rs.2,15,960/- in cash comprising Rs.1,52,640/- by way of road tax for eight years from August 1, 1995 to July 31, 2003, Rs.38,160/- by way of 25% penalty thereon, Rs.9,160/- as interest and Rs.16,000=00 as 'C.F.'.

3.2 Feeling aggrieved by the imposition of tax and penalty, the petitioner filed representation dated July 2, 2003 and additional representation dated July 28, 2003 before the Commissioner of Transport. The representation made by the petitioner was treated as an appeal under Section 14 of the Tax Act and was registered as Tax Appeal No.77 of 2003. The Commissioner of Transport, Ahmedabad, rejected the said appeal by an order dated September 19, 2003. According to the petitioner, reply-cum-objections filed by the petitioner could not have been treated as an appeal by the Commissioner of Transport and, therefore, order dated September 19, 2003 passed by the Commissioner of Transport, is liable to be set aside. What is claimed by the petitioner is that crawler-crane, in view of its characteristics, does not fall within the definition of 'motor vehicle' as

defined in Section 2(28) of the M.V. Act nor within the definition of 'construction equipment vehicle' as defined in Rule 2(ca) of the Central Motor Vehicles Rules, 1989 ("the Central Rules" for short) and, therefore, the Commissioner of Transport was not justified in holding that crawler-crane TATA-320 was a 'motor vehicle' under Section 2(28) of the M.V. Act and also liable to be taxed under the provisions of the Tax Act. What is claimed by the petitioner is that crawler-crane of the petitioner is neither rubber-tyred nor rubber-padded nor steel-drum wheel mounted nor self-propelled nor manufactured with 'on or of' or 'on and of' and, therefore, cannot be termed as 'construction equipment vehicle' within the meaning of Rule 2(ca) of the Central Rules. According to the petitioner, the equipment is purely off highway construction equipment designed and adopted for use in an enclosed premises, factory or mine other than the road network and as it is not equipment to travel on public road on its own power, it is not a 'motor vehicle' under Section 2(28) of the M.V. Act. The petitioner has averred that the words "crawler" and "caterpillar", as appearing in English Dictionary, are misconstrued by the Commissioner of Transport and, therefore, his order is liable to be set aside. According to the petitioner, the equipment in question is neither suitable nor adapted for use on road and as the equipment cannot be used for transporting goods and, in fact, is neither used nor kept in use, the same could not have been taxed under the provisions of the

Tax Act of 1958. The petitioner has averred that the grievance of forced recovery of tax is not decided by the Commissioner of Transport, and as crawler mechanism type of construction equipments do not require registration in other States and Union Territories of India, the order passed by the Commissioner of Transport should be set aside. It is claimed by the petitioner that manufacturer of the crawler has not certified it to be motor vehicle and in view of the Government of India's letter dated March 27, 2003, crawler/chain mounted crane could not have been considered to be 'construction equipment vehicle'. Under the circumstances, the petitioner has filed the instant petition and claimed the reliefs to which reference is made earlier.

3.3 The petition filed by the petitioner was placed for admission hearing before the learned Single Judge of this Court and after hearing the learned counsel for the petitioner, the following order was passed on November 14, 2003.

> *"Heard ld. counsel appearing for the petitioner.*
>
> *Notice to the respondents returnable on 8.12.2003.*
>
> *In the meanwhile, by way of ad-interim relief, there shall be stay against execution, operation and implementation of the order under challenge, till the next date of hearing."*

3.4 On service of notice, Mr.P.S.Patel, Joint Director of Transport, Gujarat State, has filed affidavit-in-reply controverting the averments made in the petition. In the reply, it is mentioned that alternative remedy of filing Revision Application under Section 14A of the Tax Act is available to the petitioner and, therefore, the petitions should not be entertained by the Court. In the reply, it is further mentioned that disputed question of fact arises as to whether the crawler cranes are adapted for use on public roads and, therefore, the highly disputed question of facts should not be determined by the Court while exercising powers under Article 226 of the Constitution. It is mentioned in the reply that refund of tax can always be claimed under Section 9(4)(b) of the Tax Act and as no advance declaration of non-use in Form 'NT', as required by Rule 5(1) of the Bombay Motor Vehicles Rules, 1959 ("the Rules of 1959" for short), was filed, the 'crawler crane' is liable to be taxed under Section 3(2) of the Tax Act. What is mentioned in the reply is that a vehicle running upon a fixed rail or a vehicle of special type adapted for use is 'vehicle' and crawler crane, heavy duty dumper, motor graders are motor vehicles adapted for use upon roads though they may also be used in factory. According to the deponent of the said affidavit, in exercise of powers under Section 41(4) of the M.V. Act, the Central Government has issued notification dated June, 19, 1992 wherein crane mounted vehicle at Item No.(ix) is

included as a 'non-transport vehicle' and, therefore, the vehicle of the petitioner is liable to be taxed. What is averred in the reply is that looking to the definition of 'construction equipment vehicle', purely off highway construction equipment vehicles designed and adopted for use in any enclosed premises, factory or mine other than the road network and not equipped to travel on public roads on its own power are excluded, but crawler crane of the petitioner is a 'motor vehicle' within the meaning of Section 2(28) of the M.V. Act and, therefore, the reliefs claimed in the petition should not be granted. It is explained in the reply that crawler crane is required to be fitted with shoes or other device when it is to be used on public roads and, therefore, it is a 'vehicle' within the meaning of Section 2(28) of the Act. Explaining further, it is mentioned in the reply that the words "adapted for use" must be construed as 'suitable for use on roads' and as the crawler cranes are fit for use on public roads, they are vehicles within the meaning of Section 2(28) of the M.V. Act. By filing the reply, the deponent has informed the Court that prior to amendment in the First Schedule by Gujarat Act No.10 of 1998, the unamended Schedule Part-I, there were two classes of motor vehicles; i.e. A-Motor Vehicles fitted solely with pneumatic tyres; and B-Motor Vehicles other than those fitted with pneumatic tyres, which shows that the crawler cranes, which were not fitted with pneumatic tyres, were also motor vehicles. It is mentioned in the reply that the

Government of India, by its notification dated June 19, 1992, has classified such vehicles as 'non-transport vehicles' and in view of the opinion of the Principal of L.D. Engineering College also such vehicles are 'non-transport vehicles'. It is mentioned in the reply that the State of Andhra Pradesh and the State of Tamil Nadu have registered crawler cranes under the relevant provisions of the law and, therefore, it is not correct to say that the crawler mechanism type of constructions do not require registration in other States and Union Territory. What is mentioned is that by virtue of kind of work and place of work, such vehicles are fitted with crawler type mechanism instead of rubber or steel drum tyre wheels, but by change of device or system of movement, the basic function of the vehicle does not change and, therefore, the vehicle is liable to be taxed. It is mentioned in the reply that under Rule 126-B of the Central Rules, prototype of every construction equipment vehicle has to be subjected to test and manufacturer, i.e. Bharat Earth Movers Limited, has got designed approved, which would indicate that its motor vehicle would fall within the meaning of Section 2(28) of the M.V. Act. In support of this claim, the deponent has relied upon a sale certificate in Form No.21 and road worthiness certificate in Form 22 issued by BEML. In the reply, it is further mentioned that the Government of India by letter dated November 5, 2002 has stated that construction equipment vehicles are 'motor vehicles' and, therefore, the letter dated March 27, 2003

relied upon by the petitioner for contending that crawler/chain mounted cranes do not fall under 'construction equipment vehicles' should not be given undue importance. The deponent has referred to dictionary meaning of 'crawler' and contended that the crawler is a self-moving vehicle, which is fit for use on road. Along with affidavit-in-reply, photographs are produced to show that crawler mechanism is adapted for use on road and fit for use on road. It is mentioned in the reply that before passing the order, the Commissioner of Transport, Gujarat State, had heard the petitioner and taken into consideration objections filed, as a result of which, his order is not liable to be set aside.

3.5 Similarly, Special Civil Application No.15816 of 2003 is filed against the appellate order of the Commissioner of Transport rendered on September 19, 2003 in Tax Appeal No.78 of 2003, without resorting to alternative remedy of filing Revision Application under Section 14A of the Tax Act whereas rest of the petitions are filed directly in the High Court under Article 226 of the Constitution without resorting to alternative remedy of appeal under Section 14 of the Tax Act or revision under Section 14A of the said Act.

3.6 The record shows that Special Civil Application No.13335 of 2004 was filed by M/s. Jitendra G. Patel before this Court challenging

notice dated September 15, 2004 issued by the ARTO, Bhilad, under Sections 12 and 18 of the Tax Act. That petition was placed for admission hearing before the Division Bench of this Court on October 12, 2004. It was submitted by the learned counsel for the petitioner that almost identical writ petition, i.e. Special Civil Application No.8544 of 2004 filed by M/s. Larsen & Toubro Company was admitted and placed for final disposal on October 14, 2001 before the learned Single Judge of this Court. Therefore, the Division Bench comprising B.J.Shethna & Sharad D. Dave, JJ. had called for the papers of the said petition to ascertain as to why the said petition was placed before the learned Single Judge instead of the Division Bench. On perusal of the papers of the said petition, it was found that the said petition was arising out of the provisions of the M.V. Act and the Central Rules, and filed under Article 226 of the Constitution. In that view of the matter, at the first instance, the Division Bench ordered to issue notice in Special Civil Application No.13335 of 2004 filed by M/s. Jitendra G. Patel and directed that those Special Civil Applications pending for disposal by the learned Single Judge should be placed with Special Civil Application No.13335 of 2004 before the Division Bench. In pursuance of order dated October 12, 2004 passed in Special Civil Application No.13335 of 2004, the Registry placed all such matters including these 87 petitions before the Division Bench on October 14, 2004 after obtaining necessary orders from the learned Chief Justice. Mr.B.R.Gupta,

learned counsel for the petitioner, failed to supply second sets in the petitions, which were initially listed for hearing before the learned Single Judge and, thereafter placed before the Division Bench. Therefore, the Division Bench by order dated October 27, 2004, dismissed all the petitions for non-prosecution. Feeling aggrieved, the petitioner and others approached the Supreme Court by way of filing Civil Appeal Nos.5961 of 2005 to 6042 of 2005 and the appeals were allowed by an order dated September 30, 2005 in the following terms:

> "Leave granted.
>
> *Having heard the learned counsel for the parties at length, we are satisfied that there has been no satisfactory disposal of the matters in issue before the High Court and that has occasioned a failure of justice. In our opinion, the appellants, i.e., the petitioners in the High Court should have been allowed a reasonable opportunity for carrying out orders of the Court so as to make the matters ready for hearing bi-parte. For this reason alone and without expressing any opinion on the merits of the controversy at large before the High Court, the impugned judgment of the High Court is set aside and the Special Civil Applications which were disposed of by the impugned judgment of the High Court are directed to be restored to their original numbers. The matters shall be placed for directions before the Hon'ble Chief Justice of the High Court who may assign the matters for hearing by a Single Judge or a Division Bench consistently with the rules and practice of the High Court but before a bench other than the one which passed the impugned*

*judgment dated 27.10.2004. The appeals stand disposed of. The parties through their respective counsel are directed to appear before the High Court on 24th October 2005. It is also directed that the interim order dated 19.4.2004 passed by the learned Single Judge of the High Court and the operation whereof was continued by this Court vide its order dated 6.12.2004 and similar interim orders passed by the High Court in other cases, shall continue to remain in operation until the matters come up for hearing on the judicial side before the High Court.*

*Sd/-*
*(R.C.Lahoti, CJI.)*

*Sd/-*
*(G.P.Mathur, J.)*

*Sd/-*
*(P.K.Balasubramanayan, J.)*"

3.7 Thereafter, again the petitions were placed for hearing before the Division Bench comprising R.S.Garg & K.M.Mehta, JJ. on October 24, 2005 and the following common order was passed.

*"1. Since after the remand by the Apex Court, the matters have been placed before us for orders. On being asked, Mr. B.R. Gupta, learned counsel for the petitioner in each case submits that the second set as required under the High Court Rules has already been supplied by the petitioner to the High Court.*

*2. Identical matters have been admitted by us and even placed for final hearing on 28.11.2005. As the matters are*

*raising almost same or similar issues, we direct that these matters be also placed for hearing with Special Civil Application No. 11848 of 2005.*

*3. After hearing the parties, it is further directed that the past recovery up to the date of filing of the writ applications shall remain in abeyance, but the petitioner shall be obliged to deposit the current taxes if the vehicle is used or kept for use in the State, in accordance with law till final disposal of these writ applications. It is made clear that these deposits shall be subject to the final outcome of the writ applications. Mr. Gupta, learned counsel submits that in view of the earlier orders granted by this Court, the petitioners have submitted bank guarantee and as the orders have been carried out, deposit should not be encashed.*

*4. In almost identical situation in number of the cases, we have passed similar orders as passed above. For granting relief if earlier orders are to be observed, then, for modifying the relief earlier orders must also be observed. We find no reason to pass any different orders in favour of the present set of the petitions. If current taxes are not paid within four weeks, then, stay shall stand vacated automatically."*

3.8 The record further shows that thereafter, in all thirty-eight applications, i.e. Civil Application Nos.11767 of 2005 to 11804 of 2005 were filed for extension of time to deposit the amount required to be deposited pursuant to order dated October 24, 2005

and after hearing the learned counsels for the parties, the Division Bench comprising Mr.Justice A.R.Dave and Ms.Justice R.M.Doshit passed following order on December 5, 2005:

> *"Learned Advocate General has appeared for the Opponent in each application and has placed on record the details of amount payable by the applicant in respect of each vehicle. The said details have also been given to learned advocate Shri Gupta appearing for the applicant so as to convey the same to the applicant.*
>
> *Looking to the facts of the case, time for depositing the amount is extended for two weeks from today.*
>
> *In view of the above facts, all the applications stand disposed of as granted to the above extent."*

The record does not indicate that thereafter any interim order is passed in any of the petitions, which are being disposed of by the Court by this judgment.

3.9 Thereafter, the petitions were notified for final hearing before this Court and have been argued at length, in great detail and extensively on August 29, 2006; August 30, 2006; September 6, 2006; September 7, 2006, September 8, 2006, September 11, 2006 and September 12, 2006.

4. At the beginning of the hearing of the petitions, a preliminary objection was raised by Mr.Kamal B. Trivedi, learned Advocate General for the State, that alternative effective statutory remedy of filing revision application under Section 14A of the Tax Act is available to the petitioners, who have filed Special Civil Application No.15815 of 2003 and Special Civil Application No.15816 of 2003 wherein the appellate order passed by the appellate authority namely Commissioner of Transport, Gujarat State, under the said Act is challenged whereas in the rest of the petitions though alternative effective statutory remedy of filing appeal under Section 14 of the Tax Act is available, the petitioners have straightaway sought declaration under Article 226 of the Constitution that Crawler Crane TATA-320, Crawler Hydraulic Excavator PC-300, Crawler Chain Mounted Pipe-Bending Machine, Crawler Mounted Dozzer, etc. is neither a 'motor vehicle' nor a 'construction equipment vehicle' under the M.V. Act and the Rules framed thereunder and, therefore, the petitions should not be entertained by the Court. Elaborating the plea that the petitions should be rejected on the ground that alternative remedy is available to the petitioners, it was explained that the question whether crawler cranes are adapted for use on public roads is essentially a highly disputed question of fact, which should not be determined by the Court in the petitions, which are filed under Article 226 of the Constitution, but should be left to be decided by the authority constituted under the Act and,

therefore, the petitions should be dismissed.

5. In reply to this preliminary objection, Mr.V.C.Kotwal, learned Senior Advocate from Mumbai appearing for the petitioner, contended that the fact that a revision lies in two petitions and appeal lies in rest of the petitions, does not oust the jurisdiction of the Court to entertain the petitions because what is challenged in the petitions is jurisdiction of the State to levy tax on equipments, which are not 'motor vehicles' within the meaning of the M.V. Act, and the Rules framed thereunder. It was argued that against the appellate orders of the Commissioner of Transport, writ petitions along with other petitions were filed, which were dismissed by this Court as second set was not supplied in each petition, as a result of which, the petitioner had approached the Supreme Court for restoration of the petitions, but before the Supreme Court it was not contended on behalf of the respondents that the petitions should not be restored because of availability alternative remedy to the petitioner and, therefore, after remand of the petitions by the Supreme Court, such a plea should not be entertained by the Court. It was pleaded that levy of tax on the vehicles of the petitioner from the date of purchase of the vehicles, irrespective of fact that whether the vehicles had entered the territory of the Gujarat State, is upheld by the Appellate Authority on the basis of policy of the State Government and,

therefore, alternative remedy of appeal suggested by the respondents, should not be regarded as efficacious one. It was contended that the vehicles in question are not suitable for use on road, as a result of which, the contention of the petitioner is that it is beyond the legislative competence of the State to levy tax and as this plea cannot be gone into effectively either by the Appellate Authority or Revisional Authority, the petitioner should not be non-suited on the ground of alternative remedy available under the Act. It was asserted that keeping in view the peculiar facts of the case, it will not be sound exercise of judicial discretion to relegate the petitioner to the alternative remedy as suggested by the learned Advocate General and the petitions should be decided on merits. In support of these submissions, Mr.V.C.Kotwal, learned Senior Advocate for the petitioner, placed reliance on: (1) ***Smt. Gunwant Kaur & Ors. vs. Municipal Committee, Bhatinda, & Ors., (1969) 3 SCC 769***; (2) ***Hirday Narain vs. Income-Tax Officer, Bareilly, (1970) 2 SCC 355***; (3) ***Century Spinning & Manufacturing Company Limited & Anr. vs. The Ulhasnagar Municipal Council & Anr., (1970) 1 SCC 582***; (4) ***ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors., (2004) 3 SCC 553***; (5) ***VST Industries Limited vs. VST Industries Workers' Union & Anr., (2001) 1 SCC 298***; (6) ***Shambhu Prasad Agarwal & Ors. vs. Bhola Ra Agarwal, (2000) 9 SCC 714;*** (7) ***Kerala State Electricity Board vs. Kurien E. Kalathil & Ors., (2000) 6 SCC 293;*** (8) ***Ganga Retreat and Towers Ltd. &***

***Anr. vs. State of Rajasthan & Ors., (2003) 12 SCC 91;*** and, (9) ***U.P. State Spinning Co. Ltd. vs. R.S.Pandey and Anr. (2005) 8 SCC 264.***

6. After giving reply to the preliminary objection raised on behalf of the respondents, it was argued by Mr.V.C.Kotwal, learned Senior Advocate for the petitioner, that the State Motor Vehicles Taxation Acts including the Bombay Motor Vehicles Tax Act, 1958 are enacted in exercise of powers conferred on the State Legislature by Entry 57 List II of Seventh Schedule to the Constitution and as attempt to collect tax on equipment before its entry in the State for the period commencing from the date of its purchase is wholly unconstitutional, the prayers claimed in the petitions should be granted. It was argued that the collection of tax on the equipments of the petitioner, which are not suitable for use on roads, is beyond the legislative competence of the State in view of the provisions of Entry 57 List II of the Seventh Schedule to the Constitution and, therefore, the same should be struck down by the Court. It was asserted that the definition of 'construction equipment vehicle' in Rule 2(ca) of the Central Rules has no bearing on the interpretation of the provisions of the Tax Act, firstly because Section 2(28) of the M.V. Act, which defines 'motor vehicle' or 'vehicle', is not amended to include 'construction equipment vehicle'; and secondly because 'construction equipment vehicle' with

caterpillar type of movement is neither contemplated in Entry 57 nor in the provisions of the Tax Act and, therefore, the petitions should be accepted. It was asserted that the words 'for use upon roads' employed in Section 2(28) of the M.V. Act defining the 'motor vehicle' cannot be larger in their import so as to include vehicles which are not suitable for use on roads in view of Entry 57 of the List II of Seventh Schedule to the Constitution and as the words 'is adapted for use' have same connotation as 'is suitable' or 'is fit for use on road', the reliefs claimed in the petitions should be granted. It was maintained that the essential characters or attributes or features of the equipments of the petitioners are not such as would enable a reasonable/average man to conclude as to suitability or fitness of the equipments for the general user of the equipments on public roads without further adoption or addition as well as damage to the roads and, therefore, the respondents have no authority to collect tax on the equipments of the petitioner. After referring to letter dated March 27, 2003 by the Government of India, it was contended that the Government of India in consultation with the Chairman of C.M.V.R., which is a Technical Standing Committee to provide technical clarification and interpretation of the Central Rules having technical bearing to Ministry of Shipping, Road Transport & Highways, has concluded that the crawler/chain mounted cranes do not fall under the definition of 'construction equipment vehicle' if they are not fitted with rubber

tyres and not meant for plying on roads and as equipments of the petitioner are neither fitted with rubber tyres nor meant for plying on roads, the respondents are not entitled to collect tax thereon. It was argued that the Appellate Authority has not applied the correct tests before coming to the conclusion that TATA-320 cranes and other equipments having caterpillar type of movements are suitable or fit for use on public roads, but taken into consideration irrelevant facts by raising wrong questions and, therefore, the appellate order impugned in the petitions should be set aside. Lastly, it was pleaded that the equipments which move on iron flats made into chain such as a caterpillar vehicle or a military tank differentiate themselves from other ordinary motor vehicles and, therefore, well-deserved declaration claimed in the petitions should be granted by the Court. In support of these submissions, the learned counsel placed reliance on: (1) ***Bolani Ores Limited vs. State of Orissa, (1974) 2 SCC 777***; (2) ***Central Coal Fields Limited vs. State of Orissa & Ors., 1992 Supp. (3) SCC 133***; (3) ***Shantilal Khushaldas & Brothers Private Limited vs. Licensing Officer & Director of Transport, Goa, & Ors., 1995 (2) Goa L.T. 134***; (4) ***Raj Construction vs. Intelligence Officer, 2005 (2) K.L.T. 436.***

7. Mr.Kamal B. Trivedi, learned Advocate General, with Ms.Sangeeta Vishen, learned Assistant Government Pleader for the respondents, explained the

scheme of the Tax Act of 1958 by referring to Section 2(10) of the said Act as well as Rule 2(h) of the Rules of 1959 and contended that one needs to make a cumulative reading of the provisions of (1) The Bombay Motor Vehicles Tax Act, 1958; (2) The Bombay Motor Vehicles Tax Rules 1959; (3) The Motor Vehicles Act, 1988 and (4) The Motor Vehicles Rules, 1989, which would suggest that whenever the words 'motor vehicle' occur in the State Act and the Rules, meaning thereof should be gathered from the aforesaid Central Act and the Central Rules. It was argued that if any vehicle is covered within the meaning of term 'construction equipment vehicle' as defined in Rule 2(ca) of the Central Rules, the same would be considered to be 'motor vehicle' for the purpose of taxation under the State Law referred to above. According to the learned Advocate General, 'construction equipment vehicle', as referred to in Rule 2(ca) of the Central Rules, is very much included within the words 'motor vehicle' as defined under Section 2(28) of the M.V. Act inasmuch as the Central Government has, in exercise of its powers under Section 41(4) of the M.V. Act, issued a notification dated November 5, 2004 specifying 'crane mounted vehicle' and 'construction equipment vehicle' as defined in Rule 2(ca) as 'non-transport vehicle' for the purpose of the M.V. Act and, therefore, the said notification should be considered as *contemporanea expositio* for the purpose of understanding the meaning of the words 'motor vehicle' as defined under Section 2(28) of the M.V.

Act. What was maintained before the Court on behalf of the respondents was that the legislative intention behind the Central Act and the Central Rules is to see that the provisions thereof are read as indicated above, meaning thereby, the words 'construction equipment vehicle' should be included in the words 'motor vehicle' as defined under Section 2(28) of the M.V. Act and the provisions of the Act and the Rules should be so interpreted to make the said legislative intent effective and operative. The learned Advocate General argued that in interpreting the scope of various entries in the Legislative List in the Seventh Schedule to the Constitution, widest possible amplitude must be given to the words used and each general word must be held to extend to the ancillary or subsidiary matters, which can fairly be said to be comprehended in it and, therefore, if interpreted in this light, there is no manner of doubt that the 'construction equipment vehicle' would fall within the tax-net of the Tax Act of 1958. It was argued that the expression 'suitable for use on roads' as occurring in Entry 57 of List II of the Seventh Schedule to the Constitution should be given widest possible amplitude so as to cover not merely the aspect relating to 'fitness or suitability' but also the aspect relating to 'capability' and as the vehicles of the petitioner are capable for use on roads, the action of the respondents in levying the tax thereon should not be regarded as illegal. According to the learned Advocate General for the respondents, the tax sought to be recovered is tax on

motor vehicles for the likely use thereof on the roads, which is compensatory in character since the same is being used for providing roads and other infrastructural facilities and, therefore, the action of the respondents in collecting tax on vehicles of the petitioners cannot be regarded as without jurisdiction. While referring to communication dated March 27, 2003 of the Central Government relied upon by the petitioner, it was argued that the same cannot be relied upon so as to contend that the vehicle in question is not a motor vehicle under the M.V. Act for the purpose of the Taxation Acts because the very signatory to the above referred to communication had, in fact, opined other way round in its earlier communication dated November 5, 2002 addressed to the State Government. It was contended that communication dated March 27, 2003 cannot and should not be considered to be *contemporanea expositio* for the purpose of interpreting the definition of the term 'motor vehicle', in view of the settled legal position emerging from catena of decisions of the Supreme Court. It was asserted by the learned Advocate General that crawler mounted equipment with caterpillar type of movements and other equipments in question in the captioned proceedings should be considered to be 'construction equipment vehicle' as defined in rule 2(ca) of the Central Rules and included in the definition of the term 'motor vehicle' under Section 2(28) of the M.V. Act, as a result of which, the petitions, which lack merits, should be dismissed. Without prejudice to the above

referred to contentions, it was argued that if the preliminary objection to the maintainability of the petitions on the ground of alternative remedy is upheld by the Court, the Court should direct all the petitioners, who have rushed to this Court by filing the petitions under Article 226 of the Constitution, to avail alternative remedy, and the matters should be remanded to the concerned authority for deciding afresh while keeping in mind the directions, if any, that may be issued by the Court.

8. After concluding the arguments, the learned Advocate General, handed over a compilation containing (1) relevant provisions of the Act and the Rules and (2) relevant judgments on the point for consideration of the Court. The said compilation includes a judgment dated September 1, 2000, September 8, 2000, September 29, 2000 and October 6, 2000, rendered by the learned Single Judge of this Court in Special Civil Application Nos.9976 of 1999, 7491 of 1999, 7536 of 1999, 9826 of 1999, 10417 of 1999, 342 of 2000, 419 of 2000, 524 of 2000, 619 of 2000, 801 of 2000 and 2034 of 2000. The perusal of the said judgment makes it evident that the common question involved in those petitions with the only difference in the type and nature of vehicles/ machines was, whether such vehicles/machines were 'motor vehicles' under the Bombay Motor Vehicles Tax Act, 1958 or whether they were simply machines or equipments not covered under the said Act. The

judgment further indicates that Special Civil Application No.9976 of 1999 was argued as the main case wherein the petitioner was M/s.Larsen & Toubro Limited. The case of M/s.Larsen & Toubro Limited was that the machineries/equipments owned by it were transferred from one construction unit to another construction unit depending upon the work load in the project at hand and the same were detained by officer of the Regional Transport Office at Check-Post, Songadh, District Surat, on the ground that these machines were in fact the vehicles for which the registration was necessary and the taxes were required to be paid by the petitioner. The judgment further shows that the machines/vehicles in question in different petitions were as under:

| ***SCA No.*** | ***Type or Nature of the machine/ vehicle*** |
|---|---|
| 9976/99 | Motor Grader - 2 |
| 9826/99 | Wheel Loader - 1 |
| 10417/99 | Vibratory Roller - 1 |
| 419/2000 | Paver - 1 |
| 2034/2000 | Motor Graders - 3<br>Wheel Loader - 1<br>Vibratory - 1<br>Vibratory Roller - 1<br>Excavator-cum-Loader - 1 |
| 619/2000 | Motor Grader - 1 |
| 342/2000 | Crane - 1 |
| 801/2000 | Crane - 1 |

| | |
|---|---|
| 524/2000 | Motor Graders - 2<br>Vibratory Rollers - 2 |
| 7491/99 | Motor Grader - 1 |
| 7536/99 | Crane - 1 |

8.1 The Court examined the question as to whether the motor grader, vibratory roller, wheel loader, paver, excavator-cum-loader, crane, etc. should be treated as 'motor vehicle' or 'vehicle' in the context of the Motor Vehicles Act, 1988, the Central Motor Vehicles Rules, 1989, the Bombay Motor Vehicles Tax Act, 1958 and the Gujarat Motor Vehicles Rules, 1989 or not. The Court noticed that so far as the mobile cranes were concerned, the question was already considered by a Division Bench of this Court in Special Civil Application No.3011 of 1996 with Special Civil Application No.1308 of 2000, decided by a common judgment rendered on August 14, 2000 and following propositions emerge from the decision of the Division Bench:

*(i) The decision in the case of Bolani Ores (supra) was based on the unamended definition under Section 2(18) of the Motor Vehicles Act, 1949 (as existing then), is of no help as the cases under consideration before the Division Bench were based on the provisions of the Bombay Act as applicable to the State of Gujarat.*

*(ii) Under the new Motor Vehicles Act of 1988, through Section 2(28), 'vehicles'*

*adapted for use on roads and not of special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than 4 wheels fitted with engine capacity of not exceeding 25 cubic cms. are all included in the definition of 'motor vehicles'.*

*(iii) That,'mobile crane mounted on motor vehicle' is so manufactured and designed as to become a vehicle "adapted for use on roads".*

*(iv) That, mounted cranes are principally used at work sites or in enclosed premises for lifting or moving goods of heavy weights and loading and unloading.*

*(v) That, mounted crane on a motor vehicle is capable of being used on the roads as it is required to be sometimes taken from one work site to another and it is a motor vehicle adapted for use upon roads - may be that it is not frequently or regularly used on roads.*

*(vi)The proposition that mounted crane is a vehicle of a special type adapted for use only in factories or in any other enclosed premises was not accepted and it was found that mobile mounted crane is capable of being used on roads for its transportation and therefore, it is not a vehicle of special type for exclusive use inside the factory or enclosed premises and its liability to tax as a motor vehicle could not be questioned.*

*(vii) That, cranes which are actually at the work site and not intended to be used on roads may avail the provisions of refund of tax for non-user.*

*(viii) Thus, the challenge to the provisions of the Act of 1958 and the notification issued thereunder fixing different rates of tax on mobile cranes failed.*

8.2 It was argued before the learned Single Judge that the cranes in question in the cases were not mobile cranes nor permanently fitted on the vehicles, but the cranes, which were transported on other heavy long bedded motor carriers at different work sites and in some cases, they were motor graders, wheel loaders, vibratory rollers, paver and excavator-cum-loader and, therefore, not 'motor vehicle' or 'vehicle' within the meaning of Section 2 (28) of the M.V. Act. The learned Single Judge noticed the definition of the words 'motor vehicle' or 'vehicle' as occurring in Section 2(28) of the M.V. Act and also noticed the argument advanced by the petitioner that these machines were not adapted for use on road and were only the equipments for the purpose of carrying out projects of construction of buildings, roads, dams, highways, and bridges over rivers and only for that purpose they were being carried from one place to another place and that too not on their own wheels as such, but after mounting them on some other registered vehicles which are long bedded. After examining the scheme of the Acts and the Rules and arguments, the learned Judge held as under in paragraphs 6 to 10:

*"6. It was pointed out by Mr.Shukla, learned AGP that Chapter 4 of the Motor Vehicles Act, 1988 provides for registration*

*of motor vehicles and while Section 39 provides for the necessity of registration, Section 40 provides for registration where to be made, and, Section 41 provides for registration, how to be made. Sub-section (4) of Section 41 of the Motor Vehicles Act provides that in addition to the other particulars required to be included in the certificate of registration, it shall also specify the type of motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by notification in the Official Gazette, specify and it has been submitted by Mr.Shukla, learned AGP that in exercise of the powers conferred by sub-section (4) of Section 41 of the Motor Vehicles Act, 1988, it has specified the types vide S.O.436(E) dated 12th June 1989 under the Central Motor Vehicles Rules 1989 for the purpose of sub-section (4) of Section 41. In the said S.O. dated 12th June 1989, crane and dumper have been mentioned in column 2, i.e. type of motor vehicles against the medium and heavy motor vehicles as mentioned in column 1. The argument is that crane and dumper having been included as medium and heavy motor vehicles in the said S.O. dated 12th June 1989, there is no scope for excluding the crane and dumper from the definition of the motor vehicle and crane as well as dumper should be taken as medium and heavy vehicles in accordance with the Central Motor Vehicles Rules, 1989. Further reference has been made to S.O.451(E) dated 19th June 1992 which has been issued in supersession of S.O.436(E) dated 12th June 1989 and in the Table given in S.O. dated 19th June 1992, there is a classification of vehicles as transport vehicles and non-transport vehicles. Crane mounted vehicle has been shown at item no.ix as non-transport vehicle and Dumper/Excavator at item no.xxiv has been included as a transport vehicle. The reference has also been made to Rule 60 of the Motor Vehicles Rules, 1989. This Rule 60*

*of the Motor Vehicles Rules, 1989 is a Rule under Chapter IV, i.e. Registration of Motor Vehicles under the Gujarat Motor Vehicles Rules, 1989. Rule 176 of the said Rules also provides for exemption of road rollers, graders etc. under Chapter VII dealing with construction, repair and maintenance of motor vehicles and according to Rule 176, nothing contained in these Rules shall apply to road rollers, graders and other vehicles designed and used solely for the construction, repair and cleansings of roads or for the construction and maintenance of dams etc. Both these Rules, i.e. Rules 60 and 176 provide for exemption of road rollers, graders, etc. Thus, crane mounted vehicle and dumper/excavator are non-transport vehicles and it is to be seen as to whether these two entries made in this Table under S.O. dated 19th June 1992 really form any basis so as to treat the crane mounted vehicle or the dumper/excavator as a motor vehicle. The question of crane mounted vehicle stands decided by the order of the Division Bench and as per this S.O. dated 19th June 1992, the dumper/ excavator has been included as a transport vehicle. This Table shows that the Motor Graders, Wheel Loaders, Vibratory Rollers, Paver etc. are neither transport vehicles nor non-transport vehicles. Even the crane other than the crane mounted vehicle has not been included either as a transport vehicle or as a non-transport vehicle. Learned AGP has submitted that the exemption under Rules 60 and 176 of the Gujarat Motor Vehicles Rules, 1989 has been withdrawn by the notifications issued in April 2000 and July 2000.*

*7. (a) Crane is a machine for moving heavy objects both vertically and horizontally. Cranes range in capacity from a few hundred pounds to several hundred tons; motive power may be furnished by hand, by steam or internal combustion engines, or*

*by electric motors. In form, cranes are classified as jib, derrick, or bridge. A jib crane carries a horizontal jib or beam at the top of a vertical pillar. Horizontal motion of the load is obtained by rotation of the jib or the entire crane or by carrying the hoisting tackle over a movable trolley running on the beam. The derrik crane, or derrik, is a cartilever design and consists of a boom, hinged at the base to the bottom of a vertical mast and supported at the tip by tackle from the top of the mast; the mast is braced or counterweighted to keep it from collapsing toward the boom. Horizontal motion is obtained by rotating the derrik and by luffing, that is raising or lowering, the boom. A bridge crane consists of a horizontal beam, running on tracks at both ends for longitudinal motion and carrying a trolley running on the beam for lateral motion. The ordinary bridge crane runs on elevated tracks, while the gantry crane is mounted on legs that run on tracks at ground level.*

*(b) Paver is used for the purpose of uniform distribution of Coal Tar at the time of construction of roads. For that purpose, even if a paver moves on the road, it cannot be said to be a movement on the road as such because the movement is for limited use for constructing the road and once the road is constructed, on that constructed part of the road, there is no need of movement of the paver nor in fact it moves.*

*(c) Vibratory Roller has hydrostatic ground and vibratory drive on both drums which is used in the process of construction of roads for distribution of coal tar and to press the road level. It is also brought on the roads only for the purposes as aforesaid.*

*(d) Motor Grader has six wheels and flywheel horsepower of 145 HP and it is also used for the purpose of mixing liquid coal tar with*

*concrete to be used as the material for the purpose of construction of the roads and it is brought on the roads for this purpose only at the time when the roads are under construction.*

*(e) Wheel Loader has four wheels and is used for the purpose of digging and shifting sand etc. so as to place it in the trucks. It is used for preparatory work for constructing the roads.*

*8. Section 13 of the Bombay Motor Vehicles Tax Act, 1958 provides for exemption of all motor vehicles designed and used solely for agricultural operations on farms or farm lands and the same are exempted from the payment of tax. Section 13(2) further provides that the State Government may, subject to the provisions of any rules made in that behalf, by notification in the Official Gazette, exempt either totally or partially any class of motor vehicles other than those falling under sub-section (1), or any motor vehicles belonging to any class of persons, from the payment of the tax. It is not the case of the petitioners that any of these machines/vehicles are used solely for agricultural operations or that any of these machines/vehicles are otherwise exempted under Section 13(2) of the Bombay Motor Vehicles Tax Act, 1958.*

*9. During the course of dictation of the order, learned AGP Mr.Shukla referred to a notification dated 4th April 2000 issued by the Home Department of the Govt. of Gujarat in exercise of the powers under Section 13(2) of the Bombay Motor Vehicles Tax Act, 1958 and yet another notification dated 28th July 2000 issued by the Ministry of Surface Transport of the Govt. of India and the xerox copies of the same were produced. Copies of these notifications were also made available to the learned Counsel for the petitioners and with reference to the notification dated*

*28th July 2000, some written submissions dated 6th Oct. 2000 have also been filed by Mr.Kapadia, learned Counsel for the petitioners. The notification dated 4th April 2000 as has been issued by the Govt. of Gujarat speaks of exemption only with regard to the passenger cars and motor cycles and that too, for the quarter in respect of which a corresponding tax on the vehicle has been paid in any other State or Union Territory. It is therefore, clear that none of these vehicles in question are exempted from payment of tax under Section 13 of the Bombay Motor Vehicles Tax Act, 1958. Through this notification dated 28th July 2000, the Central Motor Vehicles Rules, 1989 have been amended in exercise of the powers conferred by Section 110 of the Motor Vehicles Act, 1988 by the Central Government. Through these amended Rules, after Rule 2, Clause (ca) has been inserted, which reads as under:*

*"(ca) "construction equipment vehicle" means rubber tyred, (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck; self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities.*

*Explanation: A construction equipment vehicle shall be a non-transport vehicle, the driving on the road of which is incidental to the main off highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than*

*road network, not equipped to travel on public roads on their own power."*

*In view of this amendment, any construction equipment is a non-transport vehicle. Even if the driving of the same on the road is incidental and for a short duration at a slow speed not exceeding 50 kms per hour and what has been excluded or not included is the equipments which are purely off highway construction equipment designed and adopted for use in any enclosed premises, factory or mines, other than road work, not equipped to travel on public roads on their own power. Thus, as per this amendment, it is very clear and admits of no further argument or controversy that all or any of the vehicles in question are non-transport vehicles and there is no provision for their exemption from the tax because none of these vehicles fall in any of the exclusions as provided in the Act, i.e. Clause (ca) which is definition of the 'construction equipment vehicle'. It is apparent from the description and use of the vehicles as aforesaid that they are all construction equipment vehicles, i.e. non-transport vehicles and such construction equipment vehicles also fall within the definition of the motor vehicles or vehicles as such and hence, are liable to pay the tax.*

*10. On behalf of the petitioners, it has been pointed out by Mr.Kapadia that this notification dated 28th July 2000 has not been published in the Gazette and the same cannot be applied unless it is published in the Gazette. He has made a pointed reference to Rule 1(2) of this amendment in the Rules notified by notification dated 28th July 2000 that they shall come into force on the date of their publication in the Gazette. Mr.Shukla, learned AGP has produced the Gazette of India, Extraordinary, Part-II,*

*Khand-III(I) to show that this notification No.GSR 642(E) dated 28th July 2000 has been published. In this view of the matter, this submission on behalf of the petitioners that these Rules have not come into force has no basis and is found to be factually incorrect.*"

8.3 Ultimate conclusions drawn by the learned Single Judge have been mentioned in paragraph 11 of the said judgment, which are as under:

"*11. In the light of the discussion as aforesaid and for the reasons given hereinabove, it cannot be held that any of these machines/vehicles in question are only used as the goods to be carried from one place to another place and that they are not covered by the definition of the motor vehicle or vehicle and it is clear that they are all non-transport vehicles, may be that they are used and brought on roads for the limited purpose of constructing the roads, these equipments are certainly construction equipments vehicles/machines and there is no question of their exemption either from the requirement of registration or from the requirement of payment of the tax.*"

9. When this judgment was brought to the notice of the Court, naturally, the Court had tried to know from the learned Advocate General as to who were the petitioners in those petitions and whether the judgment rendered by the learned Single Judge has attained finality. After verification of the record available with him, the learned Advocate General informed the Court that the petitioner in those

petitions was Mr.K.D.Mehta, the Assistant Accountant Officer, ECC, Construction Group of Larsen & Toubro Limited, Ellisbridge, Ahmedabad, who has affirmed these 87 petitions, which are filed by M/s.Larsen & Toubro Limited. Thereupon, the original papers of Special Civil Application No.9976 of 1999 and other cognate matters were summoned from the Registry for perusal of this Court. The perusal of the original papers of Special Civil Application No.9976 of 1999 and other cognate matters indicated that a correct statement was made by the learned Advocate General. The learned Advocate General was further requested to inform the Court whether the fact that those petitions were filed and rejected by the learned Single Judge on merits, was mentioned in any of these 87 petitions and after verification of the record, the learned Advocate General stated at the Bar that there is neither mention of filing of those petitions in any of these 87 petitions nor reference is made to the judgment of the learned Single Judge delivered in those petitions. The learned Advocate General also informed the Court that the judgment delivered by the learned Single Judge in those petitions has attained finality inasmuch as the said judgment was neither challenged by M/s.Larsen & Toubro Limited by way of filing Letters Patent Appeal nor subjected to challenge before any other higher forum. This Court noticed that there was a serious lapse on the part of the petitioners in not mentioning the filing of the earlier petitions as well as decision rendered thereon by the learned Single Judge of this Court

and, therefore, wanted to know from Mr.V.C.Kotwal, learned Senior Advocate for the petitioner, as to why the relevant and material facts were not brought to the notice of the Court but suppressed. After verifying the record, Mr.V.C.Kotwal, learned Senior Advocate, stated at the Bar that in the petitions decided by the learned Single Judge, the vehicles fitted with tyres were considered whereas in these petitions, the vehicles with crawler mechanism are concerned. Thereupon, the Court wanted to know from the learned Senior Advocate, whether this fact is stated in the petitions and after verification, the learned Senior Advocate agreed that such a statement is not made in the petitions. Even from the judgment of the learned Single Judge or record of Special Civil Application No.9976 of 1999 and cognate matters, it could not be pointed out that the vehicles fitted with tyres were considered by the learned Single Judge. It was pointed out to the learned Senior Advocate for the petitioner that the question that any construction equipment is a non-transport vehicle even if the driving of the same is incidental and for a short duration at a slow speed not exceeding 50 Kms. per hour and there is no provision for their exemption from the tax because none of these vehicles fall in any of the exclusions as provided in the Act, i.e. clause 2(ca), which is definition of the 'construction equipment vehicle', stands concluded and a pointed question was put to the learned counsel for the petitioner as to why the material facts regarding filing of earlier petitions

and decisions rendered therein were neither stated in the petitions nor brought to the notice of the Court during the course of lengthy arguments advanced at the Bar. Thereupon, Mr.Kotwal, learned Senior Advocate for the petitioner, only stated at the Bar that having regard to the facts of the case, the lapse on the part of the petitioner be condoned by the Court and the petitions be disposed of on merits.

10. On perusal of the the averments made in Special Civil Application No.15815 of 2003, it becomes evident that the appellate authority, i.e. Commissioner of Transport, State of Gujarat, while rejecting the appeals filed by the petitioner, has placed heavy reliance on the decision of the learned Single Judge rendered on September 1, 2000 in Special Civil Application No.9976 of 1999 and other cognate matters. This is quite evident if one refers to paragraph 10 of the appellate order. As far as the appellate order is concerned, the only averment made by the petitioner in the memorandum of Special Civil Application No.15815 of 2003 is to be found in Ground 5(K), which is as under:

> *"(K) The respondent No.2 has misread and misconstrued the various decisions of the Apex Court and the Gujarat High Court cited in his impugned order in the context of the petitioner's equipment, which can neither be classified as a "motor vehicle" or "construction equipment vehicle". As such the said decisions do not at all apply to the present case."*

Thus, there is no manner of doubt that Mr.K.D.Mehta, who had filed the earlier petitions was aware about the fact that earlier the petitions claiming the same relief, as are claimed in the instant petitions, were filed and rejected by the learned Single Judge of this Court. It is relevant to notice that in paragraph 7 of the petition, the petitioner has made the following statement on oath:

> *"7. The petitioner declares that except as stated in the body of this petition it has not preferred any other proceeding in respect of the subject matter of this petition before any Court, including this Hon'ble High Court and the Hon'ble Supreme Court of India."*

10.1 The vague and round about manner in which ground (K) is couched read with paragraph 7 of the petition makes it evident that it was the intention of Mr.K.D.Mehta to suppress the material facts from the Court that earlier petitions involving similar questions were filed and rejected by this Court. If the relevant and material facts had been brought to the notice of the Court, the Court normally would not have granted *interim relief* of far reaching consequences, restraining the respondents from recovering the tax more particularly in view of catena of decisions of the Supreme Court on the point of grant of interim relief in taxation matters. Thus, by suppressing the material facts, Mr.K.D.Mehta had not only snatched unwarranted *interim relief,* but

also secured admission of all the petitions by misleading the Court. As is evident from the record of the case, even Mr.V.C.Kotwal, learned Senior Advocate, could not explain to the Court that as to how Mr.K.D.Mehta had filed earlier petitions, which were rejected and was at loss to give any satisfactory explanation to the Court regarding suppression of material facts, which means that the petitioner has taken not only the Court for a joy ride, but its counsels also.

11. It is well settled that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein may be issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition is liable to be dismissed at the threshold without considering the merits of the claim.

11.1 The Rule of the Court and one which it is of the greatest importance to maintain, is that when an applicant comes to the Court to obtain the relief on

an *ex parte* statement, he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will not examine the merits of the case. As a general rule, suppression of a material fact by a litigant disqualifies such a litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. The applicant, who does not come with candid facts, cannot hold a writ of the Court with soiled hands. Suppression or concealment of material facts is not an advocacy. it is a jugglery, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly, but states them in a distorted manner with a view to mislead or deceive the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its power to discharge the *rule nisi* and should refuse to proceed with further examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duties. In fact, such applicant requires to be dealt with for contempt of court for abusing the process of the Court.

11.2 A reference may be made to a decision of the Supreme Court in ***All India State Bank Officers Federation vs. Union of India, 1990 Supp. SCC 336***. In that case, promotion policy of the bank was challenged by the Federation by filing a petition under Article 32 of the Constitution. It was supported by an affidavit and the contents were affirmed by the President of the Federation to be true to 'his personal knowledge'. It was stated: "The petitioners have not filed any other similar writ petition in this Honourable Court or any other High Court." In the counter-affidavit filed on behalf of the Bank, however, it was asserted that the statement was false. The Federation had filed a writ petition in the High Court of Andhra Pradesh which was admitted but interim stay was refused. Another petition was also filed in the High Court of Karnataka. It was further pointed out that promotion policy was implemented and 58 officers were promoted who were not made parties to the petition. The Supreme Court, strongly disapproving the explanation put forth by the petitioner and describing the tactics adopted by the Federation as 'abuse of process of law' observed that "there is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process. Apart from misstatements in the affidavits filed before this Court, the petitioner federation has clearly resorted

to tactics which can only be described as abuse of process of court. The simultaneous filing of the writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the officers of the Bank is a practice which has to be discouraged. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a Single Court. It seems the object here in filing different petitions in different courts was a totally different and not very laudable one". Deeply grieved by the situation and deprecating the conduct and behavior of the responsible officers of a Premier Bank of the Country, the Supreme Court observed that "we have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this

case and hope that this will be a lesson to the present petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility".

11.3 Again, in ***Vijay J. Gadhavi vs. State of Gujarat, 1988 (2) G.L.R. 902***, the petitioner was serving as English Section Writer in the Court of Civil Judge (J.D.), Visavadar. He filed petition under Article 226 of the Constitution alleging that his services had been terminated though similarly situated employees were continued. He, therefore, prayed to issue a writ of mandamus directing the respondents to treat him as in continuous service and grant consequential benefits. The aforesaid allegations shocked conscience of the Court and, therefore, at the initial stage itself when the matter was listed for preliminary hearing, the Court issued notice and granted interim relief directing that the petitioner be permitted to discharge his duties and draw the salary as if the impugned order had not been passed. The respondents appeared and pointed out that the services of the petitioner, who had accepted his appointment on purely *ad hoc* basis, were terminated on account of abolition of the post. It was found by the Court that the relevant and material facts were suppressed and unwarranted interim relief was obtained by misleading the Court. The Court, without going into merits of the case,

dismissed the petition on the ground of suppression of material facts and made following observations in paragraphs 7 and 8 of the reported decision:

> *"The answers given by the learned Counsel for the petitioner leads to only one and one inference that the petitioner as well as the learned Counsel for the petitioner knew that the appointment of the petitioner was on purely ad hoc and temporary basis, but deliberately these facts are not mentioned in the petition. Now it is sought to be explained away by saying that there is no positive assertion that his appointment was on permanent basis. But it is a matter of elementary understanding that had there been any such positive averment it would have been a case of 'suggestio falsi' or 'positive falsehood'. Positive falsehood and/or falsehood by suppression, both stand on same footing. In the instant case the falsehood is by suppression of facts. A person who comes before the High Court with unclean hands and snatches the order of interim relief on the basis of deliberate suppression of material facts is not entitled to be heard at all. In fact the petitioner is liable to be dealt with for contempt of Court for misusing and/or abusing the process of Court. However, having regard to the crumbling standards of professional ethics and all pervading laxity for maintenance of standards of discipline (which is probably justified in the name of pragmatism an euphemism for 'populist stance'). I do not purpose to initiate action for the contempt of Court. But if I do not reject the petition on the ground of material suppression of facts, I would be failing in my duty.*
>
> *8. It is really not a matter of pleasure to reject a petition and tell the litigant that he is not entitled to be heard on merits. But*

*some times certain occasions do arise when one is called upon to perform unpleasant duties. Hence with much anguish and reluctance I am constrained to hold that the petition is liable to be rejected on the short ground of suppression of material facts. In the case of N.D. Patel & Company vs. Manubhai Karsanbhai Parmar and Anr., 25(1) GLR 386, a Division Bench of this High Court (consisting of R.C.Mankad, J. and myself) had taken the same view. Therein the petitioner had suppressed certain material facts. The Court held that important fact and material facts was deliberately suppressed from the Court. The Division Bench did not interfere with the award passed by the Labour Court on the ground of suppression of material facts alone. Thus, on the basis of first principles as well as in view of the principles laid down by this High Court in the aforesaid decision the petitioner is not entitled to be heard on merits and I have not permitted the learned counsel for the petitioner to address the Court on merits of the matter.*"

12. Applying the ratio laid down in the above quoted decisions to the facts of the present case, this Court finds that the petitioner, i.e. Mr.K.D.Mehta, who had filed earlier petitions and who has sworn these 87 petitions on behalf of M/s.Larsen & Toubro Limited, has suppressed the relevant as well as material facts and obtained totally undeserved interim relief by taking several Courts including the Supreme Court for a ride because even the Supreme Court was persuaded to direct to continue interim relief granted earlier. In view of the reprehensible conduct of the petitioner, this Court refuses to go into merits of the matters and is

of the firm opinion that the petitions are liable to be dismissed only on the short ground that the relevant and material facts having a direct bearing on the issue involved in these petitions were suppressed by the petitioner while filing these 87 petitions.

13. However, the point regarding suppression of material facts does not rest here. The additional affidavit filed by Mr.S.B.Patel, Joint Director, Commissioner of Transport, Ahmedabad, on September 12, 2006 would indicate that M/s.Larsen & Toubro company through its lawyer Mr.B.R.Gupta, had filed Special Civil Application Nos.2512 of 2005, 2579 of 2005 and 4156 of 2005 claiming appropriate writ or order to declare that the petitioner's crawler mounted equipment was neither a 'motor vehicle' nor a 'construction equipment vehicle' under the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules 1989 respectively and, therefore, it did not require any registration as such under the said Act and the Rules before any R.T.O. Authority in the State of Gujarat. It may be mentioned that copy of this additional affidavit was sought to be served by Ms.Sangeeta Vishen, learned Assistant Government Pleader, on Mr.B.R.Gupta, learned Advocate General for the petitioner, but as per the endorsement made by Ms.Sangeeta Vishen, Mr.Gupta had refused to accept the copy. Along with affidavit, simple copies of judgments delivered in Special Civil Application

Nos.2512 of 2005, 2579 of 2005 & 4156 of 2005, Letters Patent Appeal Nos.495 to 497 of 2005 and Special Civil Application No.817 of 2005 are also produced, which make it evident that ultimately by judgments dated March 24, 2005, the matters were remanded to the respondent, who was directed to take appropriate decision on the question, whether the equipment in question was a 'motor vehicle' or a 'construction equipment vehicle'. The affidavit would further show that the judgments of the learned Single Judge were subjected to challenge in Letters Patent Appeal Nos.495 to 497 of 2005 and the Division Bench comprising G.S.Singhvi, J. (as he then was) and Anant S. Dave, J. by judgment dated April 8, 2005 rejected the same with costs by *inter alia* making following observations:

> *"We are further of the view that the learned Single Judge did not commit any error by observing that as and when the question arises whether the equipment in question is a "motor vehicle" or a "construction equipment vehicle", the appropriate authority will decide the same by considering the evidence which may be produced by the parties and if the appellant feels aggrieved by the order of the competent authority, then it will be at liberty to challenge the same by filing appeal etc. The appellant should have, in our considered view, felt satisfied with the compassionate approach adopted by the learned Single Judge by not imposing costs."*

13.1 As observed earlier, in the beginning of hearing of the petitions, a preliminary objection was

raised by the learned Advocate General that the petitions should not be entertained in view of the alternative remedy available to the petitioner under the Tax Act of 1958 and the disputed question of fact whether crawler crane/chain mounted vehicle equipment is a motor vehicle or vehicle should be left to be decided by the authority constituted under the M.V. Act. At that time, it was the duty of Mr.B.R.Gupta, learned advocate for the petitioner, to point out to the Court that similar petitions were filed by him on behalf of M/s.Larsen & Toubro Limited Company wherein the directions as suggested by the learned Advocate General were issued and, therefore, having regard to the rule of consistency, the same directions should be issued in 85 petitions, which were directly instituted under Article 226 of the Constitution by the same petitioner. It is the duty of every advocate practising in Courts of Law to bring to the notice of the Court correct facts and prevent the Court from passing unwarranted orders. If the eighty-five petitions had been entertained on merits, without relegating the petitioner to the alternative remedy, it would have been a subject matter of great criticism amongst legal circles for passing inconsistent orders. Instead of pointing out the judgments of the learned Single Judge and the Division Bench of this Court, Mr.B.R.Gupta had kept mum and permitted his counsel to argue before the Court that 85 petitions should not be dismissed on the ground of alternative remedy available to the petitioner, but should be decided on merits.

14. There is no manner of doubt that the material facts were suppressed by the petitioner as well as by the learned advocate for the petitioner. The expression 'material facts' has not been defined anywhere. However, there is no doubt that all the facts upon which the petitioner's cause of action or the respondent's defence depends, are the material facts. In other words, all those facts which must be proved by the petitioner in order to establish right to relief can be said to be material facts. A fact is material if it goes to the root of the matter or has an important bearing on the main point raised in the petition and is material to the relief claimed. On the facts and in the circumstances of the case, this Court is of the firm opinion that filing of the earlier petitions and dismissal of the same by the learned Single Judge (Coram: M.R.Calla, J.) was a relevant fact, which goes to the root of the matter or has an important bearing on the main point raised in the petitions and is material to the reliefs claimed in the petitions.

15. The prerogative remedy is not a matter of course. While exercising power a writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material facts or attempts to mislead or deceive the Court, the Court would be justified in dismissing

the action on that ground alone and should refuse to enter into the merits of the case. Thus, all the petitions are liable to be dismissed on the ground of suppression of material facts.

16. As is evident from the record of the case, the point in issue in the instant petitions is whether the type and nature of the vehicles/machines are motor vehicles/vehicles under the Tax Act of 1958 or whether they are simple machines/equipments not covered under the said Act. This very question came up for consideration of the learned Single Judge of this Court when Special Civil Application No.9976 of 1999 and other cognate matters were disposed of by common judgment dated September 1, 2000. After considering the provisions of the Motor Vehicles Act, 1988, the Central Motor Vehicles Rules 1989, the Bombay Motor Vehicles Tax Act, 1958, the Gujarat Motor Vehicles Rules, 1989, and notification dated April 4, 2000 issued by the Home Department of the Government of Gujarat in exercise of powers under Section 13(2) of the Bombay Motor Vehicles Tax Act, 1958 as well as notification dated July 28, 2000 by which the Central Motor Vehicles Rules, 1989 were amended and Rule 2(ca) was introduced/inserted, it has been held that any construction equipment is a non-transport vehicle, may be that it is used and brought on roads for the limited purpose of constructing the roads, but it is certainly construction equipment vehicle/machine and there is

no question of exemption either from the requirement of registration or from the requirement of payment of the tax. What has been held in the said decision is that any of these vehicles, if it is found actually at the work site and not intended to be used on the roads may avail the provisions for claiming refund of the tax for non-user. The record does not show that M/s.Larsen & Toubro Limited, who was the petitioner in Special Civil Application No.9976 of 1999 and cognate matters, challenged the decision rendered by the learned Single Judge before the higher forum. It means that M/s.Larsen & Toubro Limited has accepted the said judgment and that the said judgment has attained finality.

16.1 The question which, therefore, deserves to be considered is whether *the principles of res judicata* would be applicable to the facts of the case. Section 11 of the Code of Civil Procedure, 1908 embodies the doctrine of *res judicata* or the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once the matter is finally decided by a court, no party can be permitted to reopen it in a subsequent litigation. In absence of such a rule, there will be no end to litigation and the parties would be put to constant trouble, harassment and expenses. The doctrine of *res judicata* is based on the three principles namely; (1) no man should be

vexed twice for the same cause; (2) it is in the interest of the State that there should be an end to a litigation; and, (3) a judicial decision must be accepted as correct. It is well-established that doctrine of *res judicata* codified in Section 11 of the Code of Civil Procedure, 1908, is not exhaustive. This principle, no doubt, is embodied in relation to suits, but it is applied by court for achieving the finality in litigation. It has been settled since long that though Section 11 of the Code does not, in terms, apply to writ petitions, there is no good ground to preclude decisions in matters in controversy in writ proceedings under Article 32 or Article 226 of the Constitution from operating as *res judicata* in subsequent petitions or regular suits on the same matter in controversy between the same parties and thus to give limited effect to the principle of finality of decision after full contest.

16.2 As observed earlier, Special Civil Application No.9976 of 1999 and cognate matters were disposed of on merits after contest between M/s.Larsen and Toubro Limited and the State Government, and claim of the State Government that equipments of M/s.Larsen & Toubro Limited were liable to be taxed under the provisions of the Tax Act of 1958 was upheld. The judgment was delivered by the learned Single Judge of this Court on merits and rejection of batch of petitions was not on technical grounds of laches or delay or availability of

alternative remedy. After considering highly contested respective claims of the parties, it has been held that all construction equipments vehicles, as defined in Rule 2(ca) of the Central Rules, 1989, fall within the definition of Section 2(28) of the M.V. Act, which defines 'motor vehicle' and 'vehicle' and that such equipments incur the liability of payment of tax. That very controversy, which is finally settled by the Court while deciding Special Civil Application No.9976 of 1999 and other cognate matters, is sought to be raked up by the petitioner in the petitions. The judgment rendered by the learned Single Judge of this Court in Special Civil Application No.9976 of 1999 and other cognate matters is binding on the petitioner, i.e. M/s.Larsen & Toubro, inasmuch as it has accepted the same and not challenged before higher forum.

17. In view of this state of affairs, this Court is of the opinion that the petitioner is not entitled to invoke jurisdiction of this High Court again under Article 226 of the Constitution requesting the Court to decide those very issues, which stand settled in terms of judgment dated September 1, 2000 in Special Civil Application No.9976 of 1999 and cognate matters. This is not a case of summary dismissal of Special Civil Application No.9976 of 1999 and cognate matters. Therefore, this Court is of the firm opinion that so long as judgment dated September 1, 2000 rendered in Special Civil Application No.9976 of 1999

stands and binds Larsen & Toubro Limited, it is not entitled to invoke jurisdiction under Article 226 of the Constitution and to pray to the Court to adjudicate those issues, which are settled earlier. The decision rendered by the learned Single Judge in Special Civil Application No.9976 of 1999 would operate as *res judicata* in the instant petitions, which are subsequently filed and, therefore, the petitions are liable to be dismissed also on the ground that they are barred by general principles of *res judicata* as applicable to writ proceedings under Article 226 of the Constitution.

18. Further, this Court finds that interim order dated October 24, 2005 passed by the Division Bench comprising R.S.Garg & K.M.Mehta, JJ. in the instant petitions is not complied with at all in all the petitions, except Special Civil Application Nos.22663 of 2005 to 22666 of 2005 and Special Civil Application No.23749 of 2005, which would be an additional ground to dismiss those 82 petitions. Interim order dated October 24, 2005 passed by the Division Bench of this Court has been extracted in extenso earlier. A bare reading of the said order makes it very clear that the past recovery up to the date of filing of the writ petitions was to remain in abeyance and the petitioner was obliged to deposit the current taxes, if the vehicle was used or kept for use in the State in accordance with law till final disposal of the writ petitions. On true construction of interim order dated October 24, 2005,

there is no manner of doubt that the current taxes from the date of filing of the writ petitions till their disposal were required to be deposited if the vehicle in question was used and kept for use in the 'State'. Mr.S.B.Patel, Joint Director, Office of Commissioner of Transport, has filed additional affidavit on behalf of the respondent No.2 on August 25, 2006 mentioning, *inter alia,* that from the date of filing of the petitions till December 3, 2005 total amount due and payable by way of tax, excluding penalty and interest, by the petitioners in respect of 69 petitions out of 82 petitions on the basis of whatever details were available with the office with reference to the vehicle in question in the said 69 petitions, is Rs.71,68,774/-. In order to substantiate this claim, a statement has been produced along with the affidavit at Annexure-III. What is mentioned in the said affidavit is that a copy of the statement was given to the learned advocate for the petitioner and the petitioner had submitted a demand draft dated December 8, 2005 for an amount of Rs.4,03,058/- favouring the 'Transport Commissioner, Gujarat', with reference to vehicles in question in 30 petitions only, but as the same was not full and final payment of the amount due nor in full compliance of interim order dated October 24, 2005, the same was returned to the advocate for the petitioner along with forwarding letter dated January 12, 2006. What is requested by filing the additional affidavit on behalf of the respondent No.2 is that the Court should call upon the petitioner to make the

payment of a sum of Rs.1,12,20,188/- in compliance of the order passed by the Court on October 24, 2005.

18.1 The petitioner has filed counter to the respondent No.2's additional affidavit dated August 25, 2006 on September 7, 2006 tracing the history of the litigation and claiming that as per the petitioner, continuing the validity of then existing Bank Guarantee of Rs.50,000/- per trailer, in which the crawler equipment was carried, is sufficient compliance of order dated October 24, 2005. In the counter, the petitioner has attempted to give reasons for non-payment of taxes in terms of order dated October 24, 2005, but this Court finds that they are not convincing at all. The learned counsel for the petitioner could not satisfy the Court that order dated October 24, 2005 was complied with by the petitioner.

18.2 It may be mentioned that in Special Civil Application No.4841 of 2004 and other matters, order granting *ad interim relief* in terms of paragraph 14(B) on condition that the petitioner shall furnish to the Assistant Regional Transport Officer, Himatnagar, a Bank Guarantee in the sum of Rs.50,000=00, was passed on April 19, 2004. Interim relief claimed in terms of paragraph 14(B) was as under:

> *"14(B) By way of interim relief, be pleased to order and direct the respondent*

*authority, its servants, agents, representatives and assignees, not to intercept or detain the truck trailer carrying the petitioner's crawler mounted Pay-welder bearing Machine Serial No.75W3075 and Assets Code No.2265-002-4 in connection with execution of MOPL Project at Surat."*

The order dated April 19, 2004 passed by the Court requiring the petitioner to furnish to the Assistant Regional Transport Office of Himatnagar, Bank Guarantee in the sum of Rs.50,000=00 had nothing to do with the order dated October 24, 2005. Therefore, the claim advanced by the petitioner that furnishing of Bank Guarantee of Rs.50,000=00 is sufficient compliance of order dated October 24, 2005 cannot be upheld. There is no manner of doubt that *interim order* dated October 24, 2005 is not complied with by the petitioner in 82 petitions, which are mentioned earlier and, therefore, those 82 petitions are also liable to fail on the ground of non-compliance of the interim order.

18.3 One who seeks interim relief from the Court is bound to comply with the conditions imposed while granting interim relief. If it had been made clear to the Court that the petitioner was not inclined to comply with the conditions, which may be imposed by the Court while granting interim relief, the Court would never have granted interim relief and would have permitted the respondents to recover the amount of tax in accordance with law. By not complying with

the condition imposed while granting interim relief, the petitioner has played smart with the Court and deprived the Revenue of its legitimate claim. If such a course is approved by a Court of Law, it would amount to puting a premium to the misdeeds of the petitioner. The petitioner-company claims that it is a company of international repute. One, who claims to have international reputation, should have complied with the conditions imposed by the Court while granting interim relief and should not have suppressed the relevant material facts. The conduct of the petitioner-company, to say the least, is reprehensible and deserves to be condemned. Having regard to the facts and circumstances of the case, this Court is of the firm opinion that the petitions are also liable to be dismissed on the ground that the petitioner, i.e. M/s.Larsen & Toubro Limited, has failed to comply with the conditions, which were imposed while granting *interim relief,* vide order dated October 24, 2005.

19. The learned Advocate General, on instructions, has stated at the Bar that taxes could not have been recovered from the date of purchase of vehicle or before the date of entry into the State. The record shows that the petitioner has enjoyed undeserved *interim relief* and in most of the cases, has directly approached the High Court by invoking jurisdiction under Article 226 of the Constitution. The petitioner has neither furnished the details to

the respective Check-Posts/Offices for the purpose of assessment of taxes in respect of the vehicles in question. Therefore, this Court is of the opinion that certain directions will have to be issued against the petitioner while dismissing the petitions. Having regard to the facts of the case, the following directions are issued:

(1) The petitioner is directed to pay tax in respect of all the vehicles except the vehicles involved in Special Civil Application Nos.15815 of 2003, 15816 of 2003 and 6533 of 2003 and the authorities would be entitled to recover the taxes subject to the statement made at the Bar by the learned Advocate General.

(2) The Bank Guarantee furnished in each of the petitions against the grant of interim relief against the detention of the vehicle is allowed to be encashed.

(3) The petitioner is further directed to pay not only the tax amount, but also the amount relating to penalty and interest which may be worked out and intimated to the petitioner.

(4) The petitioner is also directed to give following details to the respective Check-Post/Office for the purpose of assessment of tax

in respect of the vehicle in question.

(a) The date of entry of vehicle in the State;

(b) The date on which the vehicle left the State;

(c) The date on which the vehicles were purchased (if any) in the State of Gujarat;

(d) The supportive documents such as sale letter, bill of entry, bill of purchase, bill of lading, invoice, manufacturing (with unladen weight) specifications, etc. relating to (a) to (c) above;

(e) The petitioner is directed to supply the documents/details as may be demanded by the respondents for the assessment of tax amount.

20. For the foregoing reasons, all the petitions fail. Subject to above referred to directions, all the petitions are dismissed with costs, which is quantified at Rs.5000/- (Rupees Five Thousand Only) per petition. Interim relief granted earlier in each petition is hereby vacated.

***[J.M.PANCHAL, J.]***

***[SMT. ABHILASHA KUMARI, J.]***

Rajendra